

CALIFORNIA COASTAL COMMISSION

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Hearing Date: 7/14-16/04
Commission Action:

STAFF REPORT: APPEAL
DE NOVO COASTAL DEVELOPMENT PERMIT

LOCAL GOVERNMENT: County of Orange, Newport Coast LCP Area

LOCAL DECISION: Approval with Conditions

APPEAL NUMBER: A-5-NPC-04-004

APPLICANT: City of Laguna Beach

PROJECT LOCATION: ACT V/Corporate Yard – Newport Coast Planning Area 20A
1900 Laguna Canyon Road, Newport Coast, Orange County

PROJECT DESCRIPTION: The applicant is proposing to construct a new municipal corporate yard (i.e. public works facility) to replace an existing facility downtown and a parking lot for corporate yard employees and public parking.

APPELLANTS: Commissioners Wan and Iseman

SUMMARY OF STAFF RECOMMENDATION

At a public hearing on February 18, 2004, the Commission determined that **a substantial issue existed** with respect to the local government's approval of the proposed development on the grounds that the approval did not conform to the County of Orange certified Local Coastal Program (LCP) for the Newport Coast area.

Staff recommends that the Commission, after a public hearing, **approve a de novo coastal development permit** for the proposed development with special conditions that: 1) assure the provision of public parking as proposed by the applicant; 2) assure no loss of public art festival parking at the subject site during construction; 3) require public parking signage; 4) require the applicant to carry out the fuel modification plan as proposed; 5) require that external lighting be shielded and directed away from ESHA; 6) require a revision to the proposed Water Quality Management Plan to assure that all expected pollutants of concern are addressed; 7) require the applicant to adhere to general construction responsibilities; 8) require approval of the Regional Water Quality Control Board; 9) require the applicant to abandon local coastal development permit PA97-0163; 10) require the submittal of final project plans; 11) require that future development at the site requires an amendment to this permit or a new coastal development permit; 12) clarifies that conditions imposed by the local government remain effective to the extent that they are not in conflict with the conditions of this permit; and, 13) require the applicant, upon conveyance of the property, to record a deed restriction against the property, referencing all of the Special Conditions contained in this staff report.

SUBSTANTIVE FILE DOCUMENTS:

1. County of Orange Newport Coast Certified Local Coastal Program.
2. Local Coastal Development Permit Nos. PA97-0163 & PA03-0047.
3. Appeal of Coastal Development Permit No. PA97-0163
4. Appeal of Coastal Development Permit No. PA03-0047.
5. Mitigated Negative Declaration No. PA 970163 & Addendum PA 030047
6. Streambed Alteration Agreement No. 5-360-98, 8/18/98
7. Habitat Mitigation and Monitoring Plan, City Corporation Yard Laguna Beach, California Dated, 8/17/98, prepared by LSA Associates, Inc.
8. City's Traffic & Parking Management Plan, 3/23/2004

STAFF NOTE:

The action currently before the Commission is the de novo portion of an appeal of a local coastal development permit for development located within the jurisdiction of the certified Newport Coast (Orange County) Local Coastal Program (LCP). The Commission's standard of review for the proposed development is the certified Newport Coast LCP.

The County approved two local coastal development permits for similar development projects at the subject site, PA97-0163 (A-5-NPC-03-536) and PA03-0047 (A-5-NPC-04-004). PA97-0163 was approved by the County in 1998 but was not processed as an action appealable to the Coastal Commission. The project was approved, but the Commission was never notified of the permit, and the applicant (the City of Laguna Beach), began some of the development described in the permit, including some surface grading, placing a drain pipe and backfilling in the streambed, and implementation of a mitigation plan. However, not all work was completed. The City and County determined the local permit had expired and processed a second coastal development permit, PA03-0047. PA03-0047 was approved by the County in 2003. PA03-0047 was processed as an action appealable to the Coastal Commission. Once the County realized the earlier permit should have been processed as an appealable permit and that it had never been finally approved (i.e. no Notice of Final Action had ever been sent to the Commission's district office), the County prepared a Notice of Final Action for the earlier permit (PA97-0163) which was listed as appealable. When the Notice of Final Action was received in the Commission's district office, the Commission's appeal period commenced. Soon thereafter the Notice of Final Action for the more recent permit (PA03-0047) was received in the Commission's district office and the appeal period for that permit was established. Both local coastal development permits were appealed to the Coastal Commission. The appeal of the first permit was designated as A-5-NPC-03-536, and the appeal of the second permit was designated as A-5-NPC-04-004. On February 18, 2004, the Coastal Commission found that both appeals raised a substantial issue.

Both local coastal development permits are for similar development. Each permit would have allowed a slightly different project design at the same site. Both designs could not each be accommodated at the site at the same time. Each of the permits raise similar issues. For these reasons, the project description of A-5-NPC-04-004 has been modified to include all the development proposed by the City (including development that has already occurred) and

development no longer proposed has been eliminated. This report provides a recommendation for that permit only. However, as a condition of approval for coastal development permit A5-NPC-04-004, the applicant is required to abandon the earlier permit (A-5-NPC-03-536/PA97-163).

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution to **APPROVE** the coastal development permit application with special conditions:

MOTION: *"I move that the Commission approve Coastal Development Permit A-5-NPC-04-004 pursuant to the staff recommendation."*

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

I. Resolution: Approval with Conditions

The Commission hereby approves, subject to the conditions below, the coastal development permit on the grounds that the development as conditioned will be in conformity with the certified Newport Coast Local Coastal Program, and will not have any significant adverse effects on the environment within the meaning of the California Environmental Quality Act.

II. STANDARD CONDITIONS

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. Special Conditions:

1. Public Parking

- A. As proposed, the applicant shall construct and maintain a minimum of 111 public parking spaces at the subject site that shall be reserved for exclusive use by the general public (e.g. no Corporate Yard/employee parking). Public use of said parking shall be maximized and shall be available a minimum of the months of July and August. The public parking at the subject site shall be available no less than one hour before the opening time of the earliest art festival and one hour after the closing time of the latest art festival. Additional on-site parking (i.e. in excess of the 111 public, on-site spaces) that is vacated by employees or other users shall be made available for public use, where feasible. In addition, the applicant shall provide shuttle service, available to the general public, from the subject site to the City's downtown, for the same time period.
- B. In addition to the 111 public parking spaces identified in part A of this condition, the applicant shall provide 190 new public parking spaces in the area of the existing City Corporate Yard and City Employee Parking lot consistent with the proposed Traffic and Parking Management Program, dated 3/23/2004. As proposed, these spaces shall be reserved for use by the general public at all times. The parking spaces shall be open and available for use by the general public prior to commencement of the first summer art festival season following the occupation of the buildings authorized by this coastal development permit. Any changes to the Traffic and Parking Management Program shall require an amendment to this permit unless the Executive Director determines that none is required.
- C. **Prior to issuance of the coastal development permit**, the applicant shall submit, for the review and approval of the Executive Director, evidence of approval of a coastal development permit or evidence that the development is exempt from permit requirements or otherwise does not require a coastal development permit for the construction of the 190 public parking spaces described in B above.

2. Public Art Festival Parking – Interim Impacts

Prior to construction and public availability of the new 190 public parking spaces proposed at the existing corporate yard site and City employee parking lot, the applicant shall maintain a minimum of 170 parking spaces at the ACT V site available to the general public for the duration of the Summer Art Festival season (at a minimum during the months of July and August). These public parking spaces shall be served by the public shuttle for the same time period. As necessary, construction activity at the ACT V site shall be modified, curtailed or halted to accomplish the previously cited goals of this special condition.

3. **Signage Program**

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the review and approval of the Executive Director, a plan for signage to advertise the availability of and direct the public toward use of the public parking authorized by this coastal development permit.
1. Plans shall identify all signs including location, dimensions, materials and colors, as well as sign text, size and orientation. All plans shall be of sufficient scale and detail to verify the location, size and content of all signage, during a physical inspection of the premises.
 2. The plan shall incorporate signs that identify the location of public parking, duration of parking allowed, cost, hours of operation of the parking lot, and the availability of public shuttle service, in conformance with the requirements of Special Condition 1 of this permit.
- B. The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

4. **Fuel Modification**

The applicant shall carry out development in strict conformance with the fuel modification plan as proposed on the plans prepared by Peyo & Associates, dated October 2003. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

5. **Lighting**

Exterior night lighting shall be shielded and directed so that light is directed toward the ground and away from sensitive biological habitat.

6. **Water Quality**

- A. **Prior to issuance of the coastal development permit**, the applicant shall submit, for the review and approval of the Executive Director, a revised Water Quality Management Plan that incorporates all of the measures identified in the Water Quality Management Plan, Planning Project No. PA03-0047, dated 6/7/04, and in addition, addresses treatment of run-off containing all anticipated constituents of concern based on the proposed use of the developed site, including but limited to oil and grease from parking areas.

- B. The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

7. General Construction Responsibilities

- A. The permittee shall comply with the following construction-related requirements:

1. Prior to commencement of any work approved by this permit, a temporary barrier or work area demarcation (such as but not limited to flagging, staking or plastic mesh fencing) shall be placed between the construction areas and off-site habitat area. All temporary flagging, staking, fencing shall be removed upon completion of the development. No work shall occur beyond the limits of the project as identified on the project plans (Precise Fuel Modification Plan, prepared by Peyo & Associates, dated 10/2003).
2. Any inadvertent impacts to the adjacent park and habitat area outside Planning Area 20A by the proposed development shall be reported to the Executive Director within 24 hours of occurrence and shall be mitigated. Such mitigation shall require an amendment to this permit or a new permit unless the Executive Director determines that no amendment or new permit is required.
3. No construction materials, debris, or waste shall be placed or stored where it may encroach upon adjacent park or habitat areas or enter any drainage;
4. Construction materials, chemicals, debris and sediment shall be properly contained and secured on site to prevent the unintended transport of material, chemicals, debris, and sediment into habitat areas and coastal waters by wind, rain or tracking. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of construction-related materials, and to contain sediment or contaminants associated with construction activity, shall be implemented prior to the on-set of such activity. BMPs selected shall be maintained in a functional condition throughout the duration of the project. A pre-construction meeting shall be held for all personnel to review procedural and BMP/GHP guidelines.
5. Disposal of debris and excess material. Debris and excess material shall be disposed or recycled at a legal disposal/recycling site. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is required. No debris or excess material shall be placed on or within adjacent park or habitat areas.
6. Debris and sediment shall be removed from the construction areas as necessary to prevent the accumulation of sediment and other debris which may be discharged into habitat areas and coastal waters.
7. Any and all debris resulting from construction activities shall be removed from the project site within 7 days of completion of construction.

- B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit a revised site access, staging, work area and equipment storage plan(s) which conforms with the requirements of subsection A.1 through A.7 of this special condition. The permittee shall undertake development in accordance with the approved final plan(s). Any proposed changes to the approved final plan(s) shall be reported to the Executive Director. No changes to the approved final plan(s) shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

8. **Regional Water Quality Control Board Approval**

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, applicant shall provide to the Executive Director a copy of a permit issued by Regional Water Quality Control Board, or letter of permission, or evidence that no permit or permission is required. The applicant shall inform the Executive Director of any changes to the project required by the Regional Water Quality Control Board. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

9. **Abandon Local Coastal Development Permit PA97-0163**

- A. By acceptance of coastal development permit A-5-NPC-04-004, the applicant agrees to abandon any and all rights and entitlements that may exist pursuant to local coastal development permit PA97-0163 approved by the County of Orange or any effort to finalize that permit or make it effective by pursuing authorization from the Coastal Commission through the appeal of that local permit, under Coastal Commission File number A-5-NPC-03-536.
- B. **Prior to issuance of the coastal development permit**, the applicant shall submit, for the review and approval of the Executive Director, written evidence that PA97-163 and appeal A-5-NPC-03-536 have been abandoned.

10. **Final Project Plans**

- A. **Prior to issuance of the coastal development permit**, the applicant shall submit, for the review and approval of the Executive Director, final project plans that substantially conform with the plans submitted to the Commission, titled City of Laguna Beach Public Parking & Maintenance Facility Precise Fuel Modification Plan, dated October, 2003. Final project plans include, but are not limited to, site plans, floor plans, grading plans, elevations, and fuel modification plans.

- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

11. Future Development

This permit is only for the development described in Coastal Development Permit No. A-5-NPC-04-004. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the development governed by Coastal Development Permit No. A-5-NPC-04-004. Accordingly, any future improvements to the development authorized by this permit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit No. A-5-NPC-04-004 from the Commission or shall require an additional coastal development permit from the Commission.

12. Local Government Approval

This action has no effect on conditions imposed by a local government pursuant to an authority other than the Coastal Act, including the terms and conditions of the PA03-0047. In the event of conflict between the terms and conditions imposed by the local government and those of this coastal development permit, the terms and conditions of Coastal Development Permit A-5-NPC-04-004 shall prevail.

13. Deed Restriction

PRIOR TO ANY CONVEYANCE OF THE PROPERTY THAT IS THE SUBJECT OF THIS COASTAL DEVELOPMENT PERMIT, the permittee shall submit to the Executive Director for review and approval documentation demonstrating that the landowner has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

IV. Findings and Declarations

The Commission hereby finds and declares:

A. Project Description

The applicant is proposing to construct a new municipal corporate yard (i.e. public works facility) to replace an existing facility downtown. The proposed project also includes a parking lot for corporate yard employees and public parking. Currently the site is used by the City as a construction staging area and as a public parking reservoir during the summer art festivals (July and August).

The corporate yard portion of the project includes two buildings for maintenance, storage and office use in a total of 20,245 square feet of floor area (including such uses as vehicle repair, fleet refueling, street sweeper clean-out, and vehicle washing), a City solid waste transfer station; and 60 parking spaces for City vehicles only in a gated area. Building A will be 3,940 square feet. Building B will be 16,305 square feet. The proposed buildings will be single story, with building B including a mezzanine. In addition, the proposed project includes revisions to the existing entry point, and construction of a right turn deceleration lane in Laguna Canyon Road; a City tram stop adjacent to Laguna Canyon Road; construction of retaining walls with security fencing above to a maximum exposed height of 14 feet; security lighting; a single monument sign; and a fuel modification program. Grading of 7,900 cubic yards of cut and 6,900 cubic yards of fill (with 1,000 cubic yards of shrinkage expected during the process). In addition, approximately 50,000 cubic yards of soil will be overexcavated and recompacted in the area of the proposed buildings.

Also proposed at the subject site (ACT V) is an, ungated 173 space parking area for corporate yard employees and public parking including public park and ride/local shuttle facilities. The City asserts that the 173 space parking lot can accommodate up to 190 supervised shared spaces. However, it is not clear how the supervision would result in the additional spaces. A portion of the public parking area is proposed to be surfaced with gravel, the remainder will be paved. Landscaping with native plants is also proposed.

The applicant has proposed a Water Quality Management Plan (WQMP) to address drainage from the site. The WQMP identifies a number of Best Management Practices (BMPs) that will be implemented in conjunction with site development. The BMPs include grade breaks, oil/water separator, sewer diversion, indoor bays, use of gravel in portions of the parking lot rather than an impervious surface throughout, a continuous deflection separation (CDS) unit, pre-treatment infiltration trench, and a bio-retention area.

The proposed project includes the loss of approximately 0.24 acre of stream (824 linear feet of mostly unvegetated streambed). In addition, the proposed project includes the complete removal of approximately 3 acres of coastal sage scrub habitat, plus up to an additional 1.8 acres that will be impacted by fuel modification activities (i.e. controlled fire safe native plant palette thinning, etc.). The applicant is proposing a mitigation plan that creates a 1.03 acre high water overflow area for the creek in Laguna Canyon. Approximately 0.8 acre of the 1.03 acre mitigation site is

to be planted with riparian vegetation. In addition, approximately 0.8 acre of the slope and berm areas created by wetland excavation was seeded with coastal sage scrub plant seeds. [Note: The impacts to the streambed and to coastal sage scrub (excepting fuel modification) have already occurred. In addition, the mitigation plan was implemented in 2000.]

The work already completed at the site includes grading of 7,900 cubic yards of cut and 6,900 cubic yards of fill (with 1,000 cubic yards of shrinkage), placement of the drainage pipe within the streambed and backfill over it, and implementation of the mitigation plan.

The subject site is located within the Newport Coast area of unincorporated Orange County. The site is owned by the City of Laguna Beach, but has not been annexed by the City. Although the site is immediately adjacent to the City of Laguna Beach, and the project applicant is the City of Laguna Beach, the site is located within the jurisdiction of County of Orange, Newport Coast certified LCP. Thus the standard of review when considering the proposed development is the Newport Coast certified LCP, not the City's certified LCP. In the certified Land Use Plan portion of the LCP, the subject site is land use designated Tourist Commercial. Public works facilities are identified as a principal permitted use at the subject site. The proposed development is consistent with the LCP's land use designation for the site.

The plans submitted by the applicant are preliminary plans. As a condition of approval the applicant is required to submit final project plans in substantial conformance with the preliminary plans.

The proposed project was approved by the County under local coastal development permits PA97-0163 and PA03-0047. The County's approvals were subject to a number of special conditions. The County's approval was appealed to the Commission and the Commission found that the appeal raised a substantial issue. The project is now before the Commission at the de novo stage of the appeal.

B. History of Site

In 1980 the Commission approved, subject to one special condition, coastal development permit A-80-6746 (Sawdust Festival Corps.) which allowed "erection of artists panels and booths, tram stop, and signs for 12th Annual Sawdust Festival. Festival runs concurrently with the Festival of Arts and Pageant of Masters." (See Exhibit J). The special condition of that permit required that: "Prior to issuance of permit, applicant shall: 1. submit plans and evidence of a lease agreement with the City of Laguna Beach for remote parking. Said agreement and plans shall contain a minimum of 405 parking spaces, which may be utilized jointly among festival participants. Said parking shall not be located in the downtown area; and 2. provide agreement with the City of Laguna Beach providing for shuttle bus service to and from the remote parking locations." The special condition did not identify specific locations for the required parking. This special condition appears to have been the genesis for the City's Summer Festival Parking Agreements. Since the time of the 1980 coastal development permit, the City's art festivals and the City have entered into annual agreements to identify parking to serve the summer festivals which occur during the months of July and August. The subject site, known as Act Five (ACT V), has been identified as a parking reservoir in each Summer Festival Parking Agreement since the Commission's

approval of coastal development permit No. A-80-6746 in 1980. The ACT V site is served by a free public shuttle which transports visitors from the remote parking lot to the art festivals and the City's downtown.

The Summer Festival Parking Agreements are approved annually by the City, and the specifics change from year to year. This was true before the City's LCP was certified and has continued in the same manner under the certified LCP. The Agreements identify available parking to be used that year, and, in addition to publicly owned spaces, the Agreement also includes parking at privately owned sites. The ability of publicly owned and especially privately owned sites to provide seasonal parking fluctuates from year to year. Thus, under the annual Agreements, the provision of specific parking locations identified in any given Agreement was never committed for more than one year at a time.

When the City's Local Coastal Program (LCP) was certified by the Commission in 1993, the Summer Festival Parking Agreements were included as part of the LCP (see exhibit G). Included in the LCP submittal from the City was the 1991 Summer Festival Parking Agreement. The 1991 Summer Festival Parking Agreement was included in the LCP submittal as an example of a typical, as well as the most recent, Summer Festival Parking Agreement. The intent of including the sample 1991 Summer Festival Parking Agreement in the LCP submittal was to propose that the City's new LCP would require that the City and the art festival organizers continue to enter into annual Summer Festival Parking Agreements in connection with, and as a condition of approval of, the summer festivals. This intent is reflected in the City's resolution requesting Commission action on the LCP. The City's resolution states that the LCP is comprised of, among other things, the "Summer Festival Parking Agreements." By referencing the agreements (plural) it is clear the LCP required an agreement each year, not that the LCP was to specifically include the 1991 Agreement.

C. Public Access/Parking

The proposed project would result in the relocation of the City's corporate yard from its existing site near the City's downtown to the subject site. The subject site has historically been used as a remote parking reservoir during the summer art festivals, which occur in the months of July and August. The site has been identified for such use in every Summer Festival Parking Agreement since 1980. A fee is charged for parking at the ACT V site. However, the subject site is served by a free public shuttle which transports visitors from the subject site to the City's downtown.

The amount of parking provided for this purpose at the subject site is of some debate. The 1980 through 1997 Summer Festival Parking Agreements indicate that 318 public parking spaces were available at the subject site. From 1998 through 2004, the number of parking spaces identified at the subject site varies from 190 to 430. It should be noted that the 430 space figure reflects the changes to the site created by development (placement of a drain pipe within the onsite streambed and backfilling over it) that increased the size of the flat area on site. However, this was done pursuant to the County approved coastal development permit (PA97-0163), which for reasons described elsewhere in this report, was not actually valid. Thus the flat area available for parking at the subject site was increased without benefit of a valid coastal development permit. Therefore, the 430 space figure does not reflect the site as it existed prior to the unpermitted

work within the streambed. Therefore, the 430 space figure cannot be considered to be an accurate basis for determining the number of parking spaces historically provided at the site.

With regard to the 318 space figure, the City indicates that, although that number was identified in eleven Summer Festival Parking Agreements, it was never an accurate figure. The City surmises that the 318 space figure probably was the total number of cars that parked at the site in one day (i.e. that figure is a total of the number of all cars that entered the site throughout the day, rather than the maximum number of cars that could be accommodated at the same time on the site). To support this assertion, the City submitted a 1997 aerial photo of the site when it was parked at capacity (see exhibit E). The aerial photo depicts a total of 170 cars. It does not appear reasonable, based on the aerial photo, that the site could have ever accommodated 318 parking spaces. Based on the information contained in the 1997 aerial photo of the subject site, the Commission concurs with the City's assertion that the maximum number of parking spaces provided at the subject site was 170 spaces.

The current proposal for the subject site includes relocation of the Corporate Yard from its existing location near the downtown. The proposed corporate yard development includes: two buildings for maintenance, storage and office use with a total of 20,245 square feet of floor area (including such uses as vehicle repair, fleet refueling, street sweeper clean-out, and vehicle washing) with 60 parking spaces for City vehicles only in a gated area. The project also includes a separate and ungated parking area with 173 parking spaces for corporate yard employee or visitor parking and periodic public festival parking. The City has indicated that the ungated parking area can actually accommodate up to 190 parking spaces when the parking is "supervised". However, it is unclear how the spaces would be supervised such that room to accommodate 17 additional spaces would be provided. Consequently, the 173 space figure is deemed most appropriate for analysis of the proposed project's parking impact.

The City asserts that the ungated 173 space parking area can actually accommodate up to 190 parking spaces when the site is supervised. Also as corporate yard employees vacate the lot, additional spaces will be available to the general public. Most of the corporate yard employees leave the site by 4:30 p.m. and do not work on the weekend. The art festivals peak use periods tend to be Friday evening and on the weekends. So it is reasonable to conclude that more than 111 spaces will be available to the general public during much of the peak use periods. The Commission encourages maximizing the number of parking spaces available to the public at the subject site, and recognizes that the site, at times, will actually provide more than the 111 public parking spaces described below. The 111 space figure represents the minimum number of public spaces at the site. The City's Traffic and Parking Management Plan requires that when additional spaces are available they will be provided. However, this additional number of spaces is difficult to quantify or rely upon. Thus, the additional spaces have not been included in the project parking analysis.

The City has submitted a Traffic and Parking Management Program for the proposed development as required by Transportation/Circulation Policy 20 in the certified Newport Coast LCP. The Traffic and Parking Management Program indicates that a maximum of 62 corporate yard employees will park in the ungated, 173 space parking area at one time. Based on that, a minimum of 111 parking spaces will remain available to the public. The number of spaces

available to the public prior to the proposed development was 170 spaces. The minimum number of spaces that will remain available to the public with the proposed development will be 111. Thus the project would result in a loss of 59 public parking spaces at the subject site.

The Traffic and Parking Management Program prepared by the City in conjunction with the proposed project states that “once the project is completed, and the existing corporation yard is relocated, the parking area in the existing corporation yard will be re-striped and 130 new parking spaces will be available to the public for the first time.” (See Exhibit F). In addition, the Traffic and Parking Management Program indicates that 60 corporate yard employees that currently park in the City employee lot located next to the existing corporate yard downtown, will move out to the relocated corporate yard, freeing up an additional 60 spaces. The City employee parking lot is located along Broadway and Laguna Canyon Road. The City has indicated that it intends to shift City employee parking from the frontage road lot to the area that is now occupied by the existing corporate yard. Ultimately, 190 parking spaces in the existing corporate yard and City employee lot will be converted to public parking. The existing City employee lot is more visible to visitors arriving along Laguna Canyon Road (Laguna Canyon Road and Coast Highway are the only ways to enter or exit the City). In addition, it is in close proximity to the Art Festivals and to the City’s visitor serving uses in the downtown area. Moreover, the City’s Main Beach is approximately 3 - 4 blocks seaward of the current City employee lot/future public parking lot. And most significantly, the 190 new public parking spaces will be available to the public on a year round basis. The public parking at the subject site is presently only provided during the months of July and August.

The certified LCP contains the following Transportation/Circulation Policy (in pertinent part):

20. Traffic management program measures, including but not limited to the following, shall be encouraged by the landowner, operators, and lessees as appropriate at all stages of project development and buildout. Each Coastal Development Permit within an individual planning area shall be accompanied by a description of specific traffic management program measures, as appropriate, which shall be carried out in furtherance of this policy:
 - a. Vanpool and carpool programs which encourage and assist people in forming rideshare groups;
 - b. Setting aside preferred parking for people who share rides;
 - c. (...)
 - d. Setting up “transportation stores” to disseminate information on bus schedules and ridesharing;
 - e. (...)
 - f. (...)

- g. Within the policies of the appropriate transit provider, encourage increased frequency and range of public transit.

The LCP policies cited above require that a traffic management program be prepared for the proposed project. The City has prepared a Traffic and Parking Management Program, dated 3/23/04. Policies 20a and 20b, above, encourage ride share programs and the establishment of preferred parking for people who share rides. The historic use of the site includes remote parking served by a public shuttle to the City's art festivals and downtown area. Thus, as it currently exists the site meets the rideshare preference identified in the LCP policies. The proposed project will reduce the amount of parking available to the public at the subject site. However, the project will continue to provide remote parking that will continue to be served by the public shuttle. As described previously, a minimum of 111 spaces will remain available to the public on the subject site. Thus, the site will continue to meet the rideshare preference identified in the LCP as well as the requirement to set aside preferred parking for people who share rides. Based on the continued provision of 111 remote parking spaces served by the public shuttle, the Commission finds the proposed project is consistent with the LCP provisions regarding ridesharing. The City provides transportation stores to disseminate information on bus schedules at the subject site and throughout the City. In addition, the City provides the shuttle service at the site as well as a City bus program. Thus, the proposed project and the City generally, are consistent with Policies 20 d and g of the LCP.

Furthermore, in addition to the minimum of 111 public spaces remaining at the site, the City's Traffic and Parking Management Program includes creation of 190 new public parking spaces on the periphery of the downtown. The new parking will be within walking distance to the summer art festivals, the downtown area, and Main Beach. Thus the new public parking proposed by the City will provide meaningful access to much of the City's visitor serving resources. Because the new public parking spaces will be available on the periphery of the downtown, visitors arriving via Laguna Canyon Road will not need to drive through the downtown area to access the parking. Capturing motorists prior to entering the downtown will help minimize traffic congestion downtown. Moreover, the newly created parking at the to-be-vacated corporate yard will be available to the public on a year-round basis. The public spaces at the subject site have only been available during the summer art festival season which runs July through August. Taken together, the 111 public parking spaces remaining at the subject site and the newly created public parking spaces to be provided adjacent to the City's downtown will result in a net increase of 131 new public parking spaces. Thus, as proposed to retain remote parking on site and to provide additional spaces off site, the Commission finds that the project will not adversely impact public access, consistent with the intent of the LCP policies cited above.

Concern has been raised that the loss of remote parking spaces at the subject site will hamper the ability of the City and art festival organizers to develop adequate Summer Festival Parking Agreements in the future. However, the project will result in a net increase of public parking at the sites that are the topic of this application. The on- and off-site parking proposed as part of this project would be available to serve as parking in the Summer Festival Parking Agreements. The proposed project will not create a new impediment to providing parking for the Summer Festival Parking Agreements. The requirement to develop such agreements remains a part of the City's LCP. Nothing in the proposed project eliminates the City LCP requirements relative to

summer festival parking. Furthermore, nothing in this proposal will frustrate the City's ability to enter into future festival parking agreements.

However, it is likely that construction of the proposed corporate yard will commence before the proposed 190 new public parking spaces become available. This is due to the fact that the 190 new spaces cannot be constructed until the existing corporate yard is removed from its current location. If construction of the new corporate yard is on-going during the summer art festival season, July and August, there could be a net loss of public parking spaces available to serve the summer festivals for that season. However, if the timing and method of construction were restricted to prohibit any construction that interferes with the provision of adequate public parking to serve the art festivals, this loss would not occur. Thus, as a condition of approval the applicant is precluded from engaging in any construction that would interfere with the provision of the required 170 public parking spaces at ACT V. Only as conditioned can the proposed project be found to be consistent with the transportation and circulation policies of the Newport Coast LCP.

In order to assure that the project provides the parking as proposed, a special condition is imposed which requires that the applicant carry out the proposed public parking measures. In addition, in order to assure that the public is made aware of the availability of all the public parking included in the proposed project, a special condition is imposed that requires the applicant to prepare and implement a parking signage plan. An additional special condition is imposed to clarify that public parking must remain available at the site during construction. And, a special condition is imposed which requires that any future development at the site requires approval of an amendment to this permit or a new coastal development permit. Only as conditioned can the proposed project be found to be consistent with the transportation and circulation policies of the Newport Coast LCP.

D. ESHA

The proposed project would result in the loss of approximately 0.24 acres of stream (824 linear feet of mostly unvegetated stream). In addition, the proposed project would result in the direct loss of a total of approximately 3 acres of coastal sage scrub habitat, plus up to an additional 1.8 acres will be impacted by fuel modification activities. The subject site is identified in the LCP as a Category D ESHA (environmentally sensitive habitat area). The Commission's biologist has confirmed the site was appropriately categorized as ESHA (see Exhibit K). Category D ESHA's are described in the LCP as follows:

"ESHA Category D designates USGS Drainage Courses which are deeply eroded and of little or no riparian habitat value. They are located in Residential and Commercial land use categories and two specific Recreation sites. Typical vegetation includes elderberry, arroyo, coastal scrub, and annual grassland. These drainage courses are often incised as a result of erosion, resulting in rapid runoff and very steep narrow sideslopes generally incapable of supporting riparian habitat. Development will impact most of these ESHA's. The Open Space Dedication and Riparian Habitat Creation Programs will mitigate development impacts."

In addition, the LCP ESHA policies include the following policy regarding Category D ESHA at certain specified Planning Areas including PA 20A, which is the subject site:

“Vegetation and drainage courses will be modified or eliminated by development. The Open Space Dedication Programs and Riparian Habitat Creation Program will mitigate any habitat values lost as a result of such drainage course modification or elimination.”

Section 30007.5 of the Coastal Act provides the Commission with the ability to resolve conflicts between Coastal Act policies in the manner that is, on balance, the most protective of significant coastal resources. When the Commission certified the Newport Coast LCP it did so based on this Coastal Act provision. The certification of the LCP, as amended, relied on Coastal Act Section 30007.5 in allowing the development of 2,150 acres of the 9,493 acre LCP area with residential, recreational and tourist commercial uses while requiring that 7,343 acres or 77% of the LCP area be designated and reserved for open space (public and private conservation, recreation and park) uses. In approving the LCP which allows development on 2,150 acres the Commission recognized that some of this area contained environmentally sensitive habitat areas such as streams, and their associated riparian wetlands, coastal sage scrub and other sensitive grassland communities, and scenic hillsides. However, the Commission identified a conflict among Coastal Act policies and found that the coastal resources of the LCP area were, on balance, best protected by concentrating allowable development in certain areas while preserving large expanses of the most environmentally sensitive vegetation and wildlife areas, natural landforms, cultural resources and the provision of new public access and public recreational opportunities. The 2,150 acres is comprised, in part, of Planning Area 20A. The entirety of the proposed development, including all proposed fuel modification, would occur within this planning area.

The impacts to the streambed and coastal sage scrub resulting from the proposed development were anticipated and allowed under the certified LCP. The Open Space Dedication and Riparian Habitat Creation programs mentioned in the LCP policies cited above have occurred and are in place. Therefore, the Commission finds that the proposed development, and the associated impacts to ESHA, are consistent with the ESHA policies of the certified LCP.

The applicant is not required by the LCP to provide mitigation for ESHA impacts beyond the mitigation that occurred through the Open Space Dedication and Riparian Habitat Creation programs noted above. Nevertheless, the applicant has completed a mitigation plan which created a 1.03 acre high water overflow area for the creek in Laguna Canyon. This overflow area was graded such that its soil surface is one foot higher than the bed of the creek, close to the existing water table. Approximately 0.8 acre of the 1.03 acre mitigation site was planted with riparian vegetation. In addition, approximately 0.8 acre of the slope and berm areas created by wetland excavation was seeded with coastal sage scrub plant seeds. The mitigation plan was intended to provide additional riparian vegetation along the Laguna Canyon stream, and to give the stream channel additional water storage capacity during periods of high runoff. The mitigation plan was implemented in late 2000 and, after more than three years in place, is doing well according to the applicant's monitoring.

The subject site contains ESHA. As described above, removal of the on-site ESHA was anticipated and allowed at the time the LCP was certified. However, Planning Area 20A, of

which the subject site is a part, fronts on Laguna Canyon Road and the remainder is surrounded by the Laguna Coast Wilderness Park (LCWP). The LCWP is one of the large expanses of environmentally sensitive vegetation and wildlife areas that was identified in the LCP for preservation due to its significant habitat value and to off set the impacts anticipated by development allowed by the LCP. As such, it is extremely important to assure that the proposed development will not result in any adverse impacts to the ESHA adjacent to Planning Area 20A.

The certified LCP requires development abutting an Open Space Planning Area to provide fire protection edge treatment, including fuel breaks or fuel modification. In conjunction with the proposed development the applicant has submitted a fuel modification plan to protect the proposed development against fire hazards. The City's fuel modification plan has been approved by the Orange County Fire Authority. The proposed fuel modification plan is located on City owned land (i.e. will not extend into the adjacent, protected wilderness area) and minimizes removal of vegetation (primarily coastal sage scrub). Vegetation removal is minimized in the plan due to the fact that the proposed building will be surrounded by paved area, which allows the surrounding vegetation thinning zones to be narrower. Even so, some loss of vegetation, primarily coastal sage scrub, is expected. However, the boundaries of the proposed fuel modification plan will not extend beyond the boundaries of the City owned property which is contained within Planning Area 20A where, as described above, the loss of ESHA including coastal sage scrub is allowed by the LCP. As such the fuel modification plan will not extend into the protected ESHA area. The developed project area (3.85 acres), including its fuel modification area (approximately 1.8 acres), totals only 5.65 acres of the 8.52 acre City owned property. The City owned property is only a portion of the larger 17.4 acre Planning Area 20A. In order to assure that vegetation removal is minimized and that the limits of work are contained, a special condition is imposed which requires the applicant to carry out the fuel modification plan as proposed. Only as conditioned is the proposed development consistent the habitat protection policies of the LCP.

In addition, due to the proximity of ESHA protected by the LCP (LCWP), it is necessary to assure that proposed project's construction methods not result in adverse impacts to the ESHA, though none are anticipated. In order to protect the adjacent ESHA, a special condition is imposed which requires the applicant to incorporate certain general construction responsibilities during construction of the proposed development. Only as conditioned is the proposed development consistent the habitat protection policies of the LCP.

An additional way to minimize adverse impacts to these sensitive habitat areas is by controlling light on the project site. Exterior lighting of the new facilities could cause glare and disturb wildlife if not properly controlled. There should be additional buffering elements to address lights located on buildings and lighting for the parking areas. This can be addressed by controlling the direction of light and minimizing the amount of lighting to prevent lighting impacts. To assure that this occurs, a special condition is imposed which requires the applicant to incorporate these measures into the project. Therefore, only as conditioned is the proposed development consistent with LCP requirements regarding protection and preservation of dedicated open space

E. Water Quality

The LCP includes runoff policies and requires the preparation of drainage plans in conjunction with coastal development permits. In addition, the LCP includes the following language:

“Additional control of non-point sources will be implemented if necessary to comply with State, regional and County standards.”

The City has submitted a Water Quality Management Plan (WQMP) titled Water Quality Management Plan, Planning Project No. PA03-0047, dated 6/7/04, consistent with the LCP's requirement to prepare a drainage plan. The City's WQMP includes measures such as directing drainage from the maintenance/wash areas through an oil/water separator and then diverting it to the sewer, directing site drainage to a continuous deflection separation unit (CDS unit) to capture trash and debris, and providing infiltration trenches and bio-retention areas on site. In general, the WQMP is adequate to improve the water quality of the runoff leaving the site, with one exception. It is not clear whether the parking lot runoff will be directed first to pre-treatment (such as an infiltration trench or bioswale) prior to being directed to the CDS unit. The main pollutants of concern on the site are trash and debris and oil and grease. The CDS unit is very adequate for removing trash and debris from runoff, but it is not specifically designed to absorb oil and grease. In order to address this issue, the proposed plan must be augmented to clarify that runoff from the parking areas will be treated to remove oil and grease. Thus, a condition is imposed which requires the applicant to submit a revised WQMP that demonstrates how oil and grease will be removed from the parking lot runoff. The Commission finds that only as conditioned is the proposed development consistent with the certified LCP's drainage policies.

The LCP requires that control of non-point sources be implemented if necessary to comply with regional water quality standards. To assure that the proposed development complies with this requirement, approval from the Regional Water Quality Control Board (RWQCB) must be obtained. Thus a special condition is imposed which requires the applicant to submit evidence of review and any necessary approval from the RWQCB. The Commission finds that only as conditioned is the proposed development consistent with this LCP standard.

F. California Environmental Quality Act

Section 13096 of the California Code of Regulations requires Commission approval of coastal development permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The proposed project, only as conditioned to protect public access and parking, adjacent ESHA areas, and water quality, is consistent with the certified Newport Coast LCP. The Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least

environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.